

# PERILS AND PONTIFICATIONS: REFLECTIONS ON THE FAILURES AND JOYS OF A LAW TEACHER

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## I. INTRODUCTION

Next to fatherhood and my faith, teaching is what matters most to me, and yet it has been filled with failures as well as undeniable fulfillment and joy.<sup>1</sup> The purpose of this article is, on a selfish level, to self-explicate the bimodal nature of my professional path, but I also hope it will serve as both an inspiration and a warning to new professors and those contemplating life in academics. “When it’s good, it’s good,” would be an apt summary of my career, but by delineating my errors and omissions I hope to enrich the lives of teachers who will replace me behind the podium.<sup>2</sup> As Epictetus might put it, “they call knowledge good, and error evil; so that even in regard to what is false there arises a good, that is, the knowledge that the false *is* false.”<sup>3</sup> So let us begin.

## II. WHY LAW SCHOOL?

College really did change my life, and it changed it for the better. I had failed in nearly every endeavor, from being a busboy in a Greek restaurant on Chicago’s South Side to chopping weeds in the cotton fields of southern New Mexico. When I entered college, feeling like a desperate graybeard at the pruney age of nineteen, I finally found my nerdy nirvana in

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1. Fatherhood, faith, and teaching are of course not a hermetically sealed trichotomy. In fact, the deepest seeds of pedagogical insight are discovered within the dual prisms of our essence as parents and spiritual beings. On the complex, dialectical interconnections between fatherhood and our roles in the realms of pedagogy, production, and politics, see ISAAC D. BALBUS, *EMOTIONAL RESCUE: THE THEORY AND PRACTICE OF A FEMINIST FATHER* (1998).
2. I would love to die teaching, quite literally, just to feel that final kaboom in my heart or mind and keel forward with loving thoughts of Helen Palsgraf. The downside, of course, is that I would die hearing the anguished keening of students quite satisfied with my demise, but panicked over how, and by whom, their damnable grades would be determined.
3. EPICTETUS II, *THE DISCOURSES AS REPORTED BY ARRIAN, THE MANUAL, AND FRAGMENTS* 117-19 (W.A. Oldfather trans., 1985).

university life. It was an “intellectual feast,” as Bork would say,<sup>4</sup> and I wish every young person could experience that same sense of discovering your element, your career, and your calling. It was intoxicating, a veritable labor of love, and by the end of my freshman year I knew I would peddle my sainted grandmother to cannibals for the opportunity to teach.

The problem, however, was the market. Left to my inclinations I would have pursued a Ph.D. in English, and I dreamed of teaching creative writing seminars and classes on post-War American fiction. Yet dreaming was likely all it would be, for university jobs teaching fun stuff—literature, political science, and history—were extremely difficult to find. And so I balanced the ideal with the practical and decided on law school. Jobs teaching law seemed more accessible than professorships in the liberal arts and humanities and, even if my teaching dreams were crushed, I stood a better chance of putting food on the table as a practicing attorney than as a cab driver ruminating over an unpublished dissertation comparing Styron’s explorations of his Jewish characters<sup>5</sup> with Mailer’s use of the Irish.<sup>6</sup> My path was therefore set—excel in college, ace the LSAT, and get into the snootiest, snottiest law school that would have me.<sup>7</sup>

### III. LAW SCHOOL: THREE YEARS SHOT TO FECES

Not all of it was manure, obliterated or otherwise, but I remain ashamed of how I managed to waste so much of the opportunity I had worked so furiously to obtain. On a planet bedeviled by war, starvation, and plagues, it seems unspeakable that I squandered three years among the analytical titans and intellectual riches of Harvard Law School. In a sense I might be sermonizing to the choir (any self-screened readership is unlikely to share my lack of maturity as a student), but I really do hope that the ensuing paragraphs might tweak the perspectives of at least a few potential professors.

In law school I studied like a *fiend*, and there’s nothing wrong with that. It takes dogged determination to excel at any craft and I feel some thimbleful of pride that I pushed myself hard and pursued the wimpy lad’s

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4. See *Nomination of Robert H. Bork to be Associate Justice of the Supreme Court of the United States: Hearings Before the Comm. on the Judiciary*, 100th Cong. 854 (1987) (statement of Robert H. Bork, Judge, D.C. Cir.).

5. See, e.g., WILLIAM STYRON, *LIE DOWN IN DARKNESS* (1951); WILLIAM STYRON, *SOPHIE’S CHOICE* (1979).

6. See, e.g., NORMAN MAILER, *BARBARY SHORE* (1951); NORMAN MAILER, *THE DEER PARK* (1955); NORMAN MAILER, *AN AMERICAN DREAM* (1965).

7. I ended up at Harvard but, unfortunately, not while Derrick Bell was there. I suspect the late Professor Bell would have been such a provocative delight as a teacher, and I have always appreciated his skepticism regarding law school hiring criteria with their emphasis on pristine academic pedigrees and relative indifference to skills honed in the vineyards of practicing law. See, e.g., DERRICK BELL, *CONFRONTING AUTHORITY* 76-80 (1994).

version of the Oakland Raiders' vaunted "commitment to excellence."<sup>8</sup> Furthermore, I would take a somewhat larger dollop of satisfaction in being a *friendly* fiend, at least in the sense that I was willing to share my class notes (with their obscene remarks and doodles) as well as the outlines that I spent dozens (or perhaps hundreds) of hours preparing. Yet even this apparent generosity may have masked a deeper conceit, for on at least some occasions I would smirk within my fetid little soul with the juvenile certainty that I could openly share the fruit of my (intense) labors and still stomp the crap out of most of my supposed beneficiaries.

This weird ambivalence toward my fellow students proved to be a self-imposed ghetto where I permitted my resentments and insecurities to curtail my ability to learn from and with some genuinely brilliant and compassionate young minds. Part of this, in all fairness, was due to the environment itself.<sup>9</sup> Harvard Law School, at least a generation ago, had an odor both wicked and peculiar, a stench of supposed victimhood pluming from every orifice of some of the most over-privileged adolescents ever to scourge the planet. Not all grievances were imagined; in fact, to Harvard's credit, there were many students who had scaled economic, cultural, and even physical obstacles I could scarcely comprehend, and who had insights and empathy that would have helped me both as a person and potential pedagogue. In all candor, however, there was too much bleating by trust fund babies<sup>10</sup> and assorted miscreants who had little to bleat about.<sup>11</sup>

And I, of course, was a prime offender. I was pathetically uncertain of my intellectual aptitude. My college acquaintances had been shocked that I had catapulted from Circle Campus to the Ivies, there were doubts whether

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8. See, e.g., Lyle Fitzsimmons, *Oakland Raiders 2011 Season Preview*, THE SPORTS NETWORK, <http://www.sportsnetwork.com/merge/tsnform.aspx?c=earthlink&page=nfl/news/news.aspx?id=4431181> (last visited March 24, 2012).

9. Harvard really was a cold place, even for deities such as Archibald Cox. As Bell recounted, "[i]n all his years there, Cox confessed, he never felt anyone at Harvard gave a damn about him." BELL, *supra* note 7, at 88.

10. The wealth of many students was all too obvious and there were times I succumbed to a sense of feeling vulgar and marginalized. As astute scholars have observed:

For those students who are not in the inner circle of inclusion, and who do not feel comfortable within this system, psychological engagement becomes difficult to maintain, potentially resulting in disengagement from the institution. For example, law students who feel alienated from classmates and the institution because of socioeconomic differences often report greater personal stress and anxiety, and feel a greater sense of academic inadequacy.

Bonita London, Vanessa Anderson & Geraldine Downey, *Studying Institutional Engagement: Utilizing Social Psychology Research Methodologies to Study Law Student Engagement*, 30 HARV. J.L. & GENDER 389, 394 (2007) (footnote omitted).

11. For a sampling of such whine and rosacea, see RICHARD D. KAHLENBERG, *BROKEN CONTRACT: A MEMOIR OF HARVARD LAW SCHOOL* (1999). To borrow an apt phrase from the late Styron, there was far too much "unearned unhappiness" for such a young and hyper-privileged coterie. STYRON, *SOPHIE'S CHOICE*, *supra* note 5, at 130.

I could lay wood on a major league curve ball,<sup>12</sup> and the fear of flunking out even stopped me from renting a mini-fridge for my dorm. (For some reason the thought of returning the appliance after I failed all of my first-semester exams was too apocalyptic to bear.) These fears were irrational but very deep and led me to choose the life of a loner who would have no friends to witness my forthcoming debacle.<sup>13</sup>

Such a crisis of confidence, however, was both short-lived (thanks to my actual grades) and far less cancerous than my envy. I felt *resentment*, just a smoking anger, toward all the students I viewed as spoiled.<sup>14</sup> I felt a childish rage that so many students had loving parents who nurtured them with both emotional and financial support. Rather than gratitude for my own rising fortunes, I felt a barbed and senseless resentment toward peers who were untutored in the sickly mysteries and horrors of parental alcoholism, domestic violence, and having family members of both genders who touched in ways and places you shouldn't be touched. To be blunt, I hated these other students for being normal, for being happy, and for having a place they called home.<sup>15</sup>

I needed a good therapist. Lord, did I ever!<sup>16</sup> But it would take additional years of self-brutalization and alienation before I took that route,

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12. On the subject of curve balls, see DAVID HALBERSTAM, OCTOBER 1964 (1995). Curt Flood, one of my personal heroes, once asked the mighty Stan "The Man" Musial how to hit a curve. As Halberstam relates, "Musial duly considered Flood's request and then replied, 'Well, you wait for a strike. Then you knock the shit out of it.'" *Id.* at 60. Such simple advice on patience, power, and not over thinking has served me well at times in the courts and the classrooms.

13. Much has been written in recent years on the subject of law student misery. See, e.g., Jennifer Jolly-Ryan, *Promoting Mental Health Within Law School: What Law Schools Can Do for Law Students to Help Them Become Happy, Mentally Healthy Lawyers*, 48 U. LOUISVILLE L. REV. 95, 97 (2009) ("Law students suffer more mental health and substance abuse problems than society in general."); Todd David Peterson & Elizabeth Waters Peterson, *Stemming the Tide of Law Student Depression: What Law Schools Need to Learn from the Science of Positive Psychology*, 9 YALE J. HEALTH POL'Y L. & ETHICS 357, 367 (2009) ("The problem of law student distress encompasses not only elevated levels of stress and depression but increased substance abuse as well."); Suzanne C. Segerstrom, *Perceptions of Stress and Control in the First Semester of Law School*, 32 WILLAMETTE L. REV. 593, 594 (1996) ("Students also report extreme self-punishing attitudes, obsessive self-doubt, apathy, withdrawal from normal activities, fear, apprehension, a sense of impending doom, and panic attacks.") (footnotes omitted); Stephen M. Siproth, *Forming the Human Person: Can the Seminary Model Save the Legal Profession?*, 2007 BYU EDUC. & L.J. 181, 181 (2007) ("The soul of the law student atrophies, withers, and disappears in a fog of dysfunction."); Nancy J. Soonpaa, *Stress in Law Students: A Comparative Study of First-Year, Second-Year, and Third-Year Students*, 36 CONN. L. REV. 353, 372 (2004) ("Almost all law students exhibit a high level of stress . . .").

14. Such envy at least partially explains why my years as a law student were such a philosophical and religious wasteland. As Coffey and Kessler attest, "Resentment is a potent obstacle to spiritual progress." F. GREGORY COFFEY & MAUREN C. KESSLER, *THE REFLECTIVE COUNSELOR: DAILY MEDITATIONS FOR LAWYERS* 99 (2008).

15. And don't even get me started on their perfect skin and teeth.

16. To this day I urge students to seek spiritual guidance, to take advantage of the free university counseling, or to locate a shrink on their own. For what it's worth, and I think it's worth a lot, I post my own talk therapist's name and number on TWEN.

and, as one of the (many) rancid consequences, I remained locked in the caverns of my studies and my dorm.

And it surely had an impact on my future, both socially and professionally. On a social level, I entered into a marriage brewed in Hades before graduation, and I cannot list a single member of the Class of '85 as a friend, or even an acquaintance. When you're twisted and don't get help, you find yourself, perhaps even decades later, alone on a crooked and desolate path.

There were also profound professional consequences that left their share of occupational contusions. Even though I dreamed of being a professor, I took virtually none of the steps to reach my destination. Yes, I studied and sweated and graduated magna cum mucus, but (as I learned) universities seek teachers who did more in law school than master the farcical art of filling blue books with high-falluting babble.<sup>17</sup>

My most glaring omission was my failure to make the Harvard Law Review. If recollection serves, four or five students from each section of roughly 140 people made law review based on their grades. Hell, I wasn't nearly smart enough to cut that Poupon. Those slots went to the beautiful—or at least extraordinarily capable—minds that would end up teaching at Harvard and comparable schools. Then I made the fateful decision not to enter the writing competition for law review. I had three main reasons. First, although this might have been inaccurate and unfair, there was a clear student perception in the '80s that the write-on candidates were only second-class members of the law review, not the best and the brightest but merely the wannabes with anal compulsions. Second, it was said that the members who wrote onto the law review, regardless of their individual merits, were rarely if ever selected for judicial clerkships with the D.C. Circuit much less the blessed Supremes. And third, I lacked the intellectual stamina. I was told that the Harvard Law Review required at

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17. My technique on exams was primal and effective. First, read the question thoroughly and devote a sizable chunk of time (say, fifteen minutes on an hour-long essay) composing a skeletal outline of an answer. Second, argue each side of the issue and take an educated stab at how it should be resolved. Third, on numerous exams, quote from Duncan Kennedy and Ike Balbus. From Kennedy, I nabbed, "It is not just that the world of others is intractable. The very structures against which we rebel are necessarily within us as well as outside of us. We are implicated in what we would transform, and it in us." Duncan Kennedy, *The Structure of Blackstone's Commentaries*, 28 BUFF. L. REV. 205, 212 (1979). And from Balbus, an amazing teacher, I swiped, "The systematic application of an equal scale to systemically unequal individuals necessarily tends to reinforce systemic inequalities." Isaac D. Balbus, *Commodity Form and Legal Form: An Essay on the "Relative Autonomy" of the Law*, 11 LAW & SOC'Y REV. 571, 577 (1976). Both quotations continue to beguile me and, back in law school, I rode them for all their worth. Fourth, depending on a particular professor's political leanings, I would either roundly applaud Kennedy and Balbus or tut-tut around a bit and conclude that "Things Ain't That Bad After All." This humble pattern scored a steady diet of A- grades with occasional fluctuations in either direction.

least 35 hours of work per week, and there is no way I could have handled the equivalent of a full-time job and still garnered much substance from my courses. Less explicable is why I didn't devote myself to one of the specialty journals that might not share the lofty pedigree of the flagship Review but would have given me the opportunity to milk and develop my scholarly skills, publish my work, and help persuade future hiring committees that I was seriously devoted to life in the academy.

I also failed to forge any meaningful relationships with my professors. They were nice enough, so far as I could discern, hardly the bloated, flatulent Kingsfieldian beasts of 1L campfire stories.<sup>18</sup> In fact, most of them seemed far less spoiled and arrogant than the future lawyers they toiled to teach. My sense is that many of the professors at that time were from working-class backgrounds, hailed from places like Brooklyn and the Bronx, and belonged to families that had escaped the horrors of the Holocaust or pogroms.<sup>19</sup>

The problem wasn't the professors' personalities, but a combination of my immaturity and the nature of the institution itself. The professors, especially in the first year courses, seemed more prey than predator; the minute class ended a tsunami of neurotic 1Ls would flood toward the podium while the professor stood there, reminiscent (to switch analogies) of Sebastian in *Suddenly, Last Summer*.<sup>20</sup> I didn't necessarily feel intimidated by the professors; rather, I felt sorry for them at times, and virtually always sensed they inhabited a different world altogether, a world beyond my ken. I feared disappointing them, perhaps, but for whatever reason I never even seriously contemplated becoming a research assistant or taking other steps that could have led to the establishment of a mentor-mentee relationship.<sup>21</sup>

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18. See, e.g., JOHN JAY OSBORN, JR., *THE PAPER CHASE* (1970); SCOTT TUROW, *ONE L: THE TURBULENT TRUE STORY OF A FIRST YEAR AT HARVARD LAW SCHOOL* (1977). The late legends Clark Byse and Philip Areeda could easily match Kingsfield's Socratic thunder, but they leavened it with humor and a genuine sense of caring.

19. See, e.g., Morton J. Horwitz, *Jews and McCarthyism: A View From the Bronx*, in SECRET AGENTS 257, 257 (Marjorie Garber & Rebecca L. Walkowitz eds., 1995) ("My family lived in the Hunts Point section of the East Bronx, a then still largely Jewish, working-and-lower-middle-class enclave."); Jennifer Frey, *Introducing Arthur Miller*, THE LAW SCH., Autumn 2007, at 67 (discussing Miller's childhood "in a lower-middle-class Brooklyn neighborhood"). In a different vein of pain, Clyde Ferguson, the only black tenured professor when I was there, sadly reminded me of a badly scarred but gentle-hearted warrior whose final reward for decades of struggle was to babysit a brood of more than 100 whiny and demanding carnivores through the intricacies of *Erie*. (See *Erie R. Co. v. Tompkins*, 304 U.S. 64 (1938).) Professor Ferguson died my second year, while still in his 50s, and it was tragic, but to no one's surprise. For touching tributes, see Derrick Bell, *A Tragedy of Timing*, 19 HARV. C.R.-C.L. L. REV. 277 (1984); Badi G. Foster, *Memories of Clyde*, 97 HARV. L. REV. 1268 (1984); Stephanie Y. Moore, *Pain and Courage*, 97 HARV. L. REV. 1264 (1984).

20. TENNESSEE WILLIAMS, *SUDDENLY, LAST SUMMER* (1958).

21. Such mentoring, alas, is all too rare. See, e.g., Carl A. Auerbach, *Legal Education and Some of Its Discontents*, 34 J. LEGAL EDUC. 43, 57 (1984) (explaining how "the great bulk of law students" felt there was no professor who took a special interest in their education, personal problems, or

Law school was thus a blown opportunity, a true squandering of resources and opportunities that could have broadened my mind and enhanced my career in myriad ways. A Harvard sheepskin and a rotund G.P.A. did indeed provide my entry into teaching, but I believe my career might well have followed a greener path had I made some effort to befriend other students, served as an editor of a journal, and sought professorial advice on teaching, scholarship, and the real politics of hiring and tenure.

#### IV. OUT THE DOOR AND INTO THE FIRMS

No, I didn't do a judicial clerkship. That was stupid, just can't-pour-piss-out-of-a-boot stupid, and I regret it to this day. Once again, for a self-professed professor in the making, I seemed almost intent on sabotaging my chances. I *knew* that the golden road to academia entails both law review and a clerkship, yet I did neither. As for the foregone clerkship, it was due to a mixture of fecklessness and sloth. On a personal level, I simply do not like most judges; they're persnickety, arrogant, and possess the power to harm. The idea of being an indentured servant to some black-robed behemoth made my tummy hurt. Furthermore, it seemed both easier and smoother to cool my heels in a law firm and pay down my debt than to join the competitive scramble for a clerkship with a prominent judge. It was just simpler to let the law firms come to me instead of chasing a bevy of federal judges. Hundreds upon hundreds of firms interviewed at Harvard, kissed our little fannies, flew us across the continent (or beyond), put us up at fancy hotels, and made us feel like younger, fresher versions of the Stones.<sup>22</sup> And so to the firms I went.

My first year was essentially a redshirt season in Hawaii, where it would be difficult to opine that I was an attorney in any genuine sense. To the contrary, rather than a true "commercial litigator," I was a frightened worm of a research technician who hid in the library by day and partied in

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career); Robert P. Schuwerk, *The Law Professor as Fiduciary: What Duties Do We Owe to Our Students?*, 45 S. TEX. L. REV. 753, 759 (2004) (lamenting the "sadly neglected and underutilized" role of mentoring in legal education). One reason for this dearth of mentoring is that it is woefully undervalued among the professoriate. As Professors Sturm and Guinier explain, "Faculty who devote time and energy to students' learning outside the classroom do so at their own 'expense.' They receive little credit or reward, and colleagues view this work as a distraction from the core functions of scholarship and in-class teaching." Susan Sturm & Lani Guinier, *The Law School Matrix: Reforming Legal Education in a Culture of Competition and Conformity*, 60 VAND. L. REV. 515, 533 (2007).

22. Staring at my sparse resume, an elderly professor asked what I did in law school in lieu of law review, working as a research assistant, or participating in advanced moot court/mock trial competitions. I don't remember my mumbled response, but truth be told an ungodly amount of time was devoted to sitting alone in the dark in my dorm with the headphones on listening to "Tattoo You," which proved to be (with rather heavy symbolism) the last genuinely great studio album by the Rolling Stones. ROLLING STONES, TATTOO YOU (Rolling Stones/Virgin 1981).

Makiki by night. As Seneca would say, I would “lose the day in expectation of the night, and the night in fear of the dawn.”<sup>23</sup>

In less than a year I knew that I had to reboot my career. I returned to the mainland and landed a position at a prestigious East Coast firm with a reputation for producing professors. And it worked, at least to a degree. The firm treated me well, paid me handsomely, and gave me the opportunity to work for, and be mentored by, the Brooding Irishman, the Cincinnati Kid, and other gifted attorneys I won’t embarrass by naming.

Law firms can be tremendous training grounds for professors. I fell in love with labor and employment law, which provided grist for my first fistful of publications as a teacher, and, more importantly, immersed me in the world of speaking under pressure and guiding others through legal spider webs while pushing me to the limits in terms of research, writing, and analysis. Most of all, it taught me a new level of humility and engendered deeper empathy for people struggling through what can be a damnably difficult discipline. Overall, I was pretty good and lucky to be misperceived as very good, but life as a practicing attorney is a great leveler in the sense that no one is spared occasional defeat and despair. To this day, in class, I play the role of a demanding and profane but friendly and informal partner trying to prod and inspire the most out of rookie lawyers.

The firm helped me develop a certain sense of prowess (albeit with an addiction to nicotine) that has served me well in teaching. Furthermore, at least early in my academic life, I published with plodding consistency just as I routinely had been grinding out briefs, motions, and other dreck as a lawyer. Indeed, publishing seemed easy in the sense that (unlike a practicing attorney) I could write about any subject and take any legal position I chose. So far, so good.

## V. PROBLEMS IN PARADISE: PUBLISHING PITFALLS AND OTHER TALES OF WOE

The problem, however, is that my initial articles were parochial, pedantic, and pedestrian. As a lawyer, I *marched* through the documents I drafted, with a legally effective but aesthetically mind-numbing analysis of case after case, complete with far too many block quotations by judges and far too little in the way of creativity and original insight. Not all of this was my fault. I was there *to serve the clients*, not to impress academe, and as a lawyer there is a premium on the clear and direct application of the doctrine (or, perhaps more accurately, what you’re trying to persuade the court is the “true” doctrine) as opposed to elegant delineations of theoretical tensions.

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23. Lucius Annaeus Seneca, *On the Shortness of Life*, in 2 MORAL ESSAYS 287, 341 (John W. Basore trans., 2001).



My job was to be a doctrinal snowplow, methodically clearing paths for my clients to follow. Pedestrian, perhaps, but it served practical human needs.

Unfortunately, I wrote the same way as a professor. A wise dean once advised new teachers to “write about what you know,” and what I knew best was how to read cases thoroughly, identify legal conflicts, and make a pitch as to how those struggles should be resolved. In almost paint-by-numbers steps, I would exhaustively discuss every relevant and significant case on each side of the doctrinal divide and attempt to build a simple legal overpass rooted in common sense and a homespun feeling of fairness.

This approach, I learned, is far more likely to impress partners, their clients, and judges than professors and law review editors.<sup>24</sup> There is nothing remotely theoretical about my labor law articles, nothing that deconstructs fundamental assumptions on the nature of justice or that seeks to set forth competing and conflicting prescriptive/descriptive visions of law and society. Nothing, in other words, that would make hearts go pitter-patter in the legal academy.

My choice of topics was equally problematic. I wrote about what I knew, and what I knew centered on issues that are genuinely important to workers, unions, and management, but undoubtedly would appear pinched and picayune to professors with loftier vistas. The pursuit of industrial democracy and personal dignity in the workplace is incremental and matters such as the right to wear union insignia, the maintenance of laboratory conditions, and the deterrence of misconduct by employers, unions, and the government are all basic components of assuring that labor representation elections are a fair and reliable mode of vindicating the American workers’ freedom of choice. Again, however, this is not the type of scholarship that typically titillates academic purists.<sup>25</sup>

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24. For the classic—and a highly acidic—discussion of the chasm between practical and professorial writing, see Harry T. Edwards, *The Growing Disjunction Between Legal Education and the Legal Profession*, 91 MICH. L. REV. 34 (1992). For a more recent analysis of this disconnection, see Richard Brust, *The High Court vs. The Ivory Tower*, 98 ABA J. 50, 52 (Feb. 2012) (describing how “many judges and practicing attorneys spurn law reviews, feeling snubbed by high-strung theories that professors churn out, claiming the articles are mere navel-gazing and of little use to understanding everyday law”).

25. I did, I confess, make clumsy efforts to fancy up my footnotes with citations to potent theorists such as Gerry Frug and Roberto Unger. See, e.g., John W. Teeter, Jr., *Keeping the Faith: The Problem of Apparent Bias in Labor Representation Elections*, 58 U. CIN. L. REV. 909, 963, n.222 (1990) (citing Gerald Frug, *The Ideology of Bureaucracy in American Law*, 97 HARV. L. REV. 1276, 1334 (1984)); John W. Teeter, Jr., *Between the Buttons: Employer Distribution of Antiunion Insignia*, 24 N.M. L. REV. 69, 81, n.67 (1994) (citing ROBERTO MANGABEIRA UNGER, FALSE NECESSITY: ANTI-NECESSITARIAN SOCIAL THEORY IN THE SERVICE OF RADICAL DEMOCRACY 274 (1987)). This was sadly akin to painting rainbows on desert sands and expecting the rain of recognition to descend, however, and it is peculiar that Critical Legal Studies, which I inhaled as a student, had such a de minimis impact on my scholarship. Perhaps ironically, CLS helped hardly a whit as a new member of the professoriate, but benefited me greatly as a big firm attorney representing the likes of Polaroid and General Dynamics. Most of all, I credit the Crits with

And yet, with self-biting candor, I must acknowledge an undeniably deeper flaw in my scholarship. My goal was to capture the minds, if not hearts, of real world decision-makers in my field—the National Labor Relations Board and the federal judiciary. In my mind, judges and Board members would actually read my arguments, be moved by my reasoning, and transform (or at least nudge) the doctrine in ways that would best serve the interests of working Americans. This proved, alas, to be the deepest debacle of my life as a professor. My labor law articles sank like whale excrement in the seas of jurisprudence, and the most I’ve ever mustered is a solitary citation by a state court judge.<sup>26</sup> Perhaps the ultimate problem was that my labor law articles were neither this nor that, too practical for the pedagogues but not pragmatic enough for the judges and the Board. In any event, I failed to leave my mark on the law, and that has given rise to some melancholy musings.

How could I have handled it better? What steps might have enabled me to progress as a scholar in ways that would have impacted both the lives of everyday workers through refinements of the legal doctrine while also providing theoretical juice for the parched professoriate? Several thoughts slither to mind. As a student, I should have taken off the headphones, crawled out of my cave, and gone to work for one of my professors. I had no idea that labor law could capture my consciousness (that Paulian flash of intuitive insight came while walking down Beacon Street in Boston and was confirmed when the firm’s coolest partners were found in that department) but there were a host of other subjects I might have found comparably compelling and on a faculty as large as Harvard’s there were certainly professors who could have used a troubled but talented gofer. Serving as a research assistant would have helped in at least two fundamental ways. While still a student, such endeavors would, I believe, have given me a better feel for the texture of transformative scholarship. Just as I learned to be a pretty fair author of motions and briefs through digging doctrinal ditches with better-seasoned attorneys, I might have mastered the ropes of scholarship via working for professors. Mentoring

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teaching me that even the clearest, plainest rules often contain ambiguities, lacunae, and conflicts that I could seize upon and spin to a client’s advantage. Duncan Kennedy hasn’t done jack for my teaching career, but he trained this little Hessian perhaps better than he knew. See Duncan Kennedy, *Rebels from Principle: Changing the Corporate Law Firm from Within*, HARV. L. SCH. BULL., Fall 1981, at 36, 37 (comparing law teaching to “training the Hessians”).

26. Sheriff of Worcester Cnty. v. Labor Relations Comm’n, 805 N.E.2d 46, 52 (Mass. App. Ct. 2004). I was so grateful that I drafted a thank-you letter, but the computer deleted it before I could figure out how to print my epistle on university letterhead. That seemed all too fitting. Thank you Judge McHugh, wherever you are.

matters, both in terms of technical efficacy and conceptual inspiration, and my failure to work as an R.A. was a needlessly self-inflicted wound.<sup>27</sup>

Helping professors with their scholarship would have paid additional dividends when I too became a teacher. Many assistant professors send drafts of their initial work to the teachers they had bonded with in law school, and such mentors can prove invaluable in supplying ideas, editorial tips, and help in landing the article in a prominent review. Given my failure to forge such bonds, I had no recourse to such a resource.

Furthermore, as a professor, I probably should have availed myself of the insights of colleagues on campus and scholars at other institutions. As all of the opening acknowledgements in countless articles attest, fellow teachers can be extraordinarily helpful at every stage of the publication process. In essence, I have replicated the failure of my student years by not realizing that the lone wolf (or lonesome dove) who foolishly forsakes the collaborative quest may be left with more hunger than pride.<sup>28</sup>

Finally, I needed to do a better BPL<sup>29</sup> and focus on long-term enrichment rather than the quick payoff. In short, I was tempted by the lure of summer teaching. My cost/benefit analysis was sadly skewed; as a new father and homeowner I felt a craving for cash that, in retrospect, was fueled more by internal neurosis than creditors howling at the door. Summer teaching was far more remunerative than writing, and a damn sight more pleasant to boot. I love teaching and I'm not allergic to greenbacks so for too many summers I have taught for fun and money while my production shrank to virtually nil. You don't get your tenure yanked for such neglect, but colleagues tend to stare as though you've broken wind in a crowded elevator. Much more meaningfully, my summer teaching versus writing calculus robbed me of multiple opportunities to produce articles that might have influenced both factories and faculties. Finally, on a purely personal level, my unconscionably lengthy greed-induced hiatus from legal

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27. The centrality of mentoring to both personal and professional development has received growing recognition over the years. See, e.g., Lila A. Coleman & Julia C. Spring, *Socrates Unbound: Developmental Perspectives on the Law School Experience*, 24 LAW & PSYCHOL. REV. 5, 10 (2000) ("Mentors offer a mixture of parent and friend, guide and sponsor, welcoming one into the adult world."); Bridget A. Maloney, *Distress Among the Legal Profession: What Law Schools Can Do About It*, 15 NOTRE DAME J.L. ETHICS & PUB. POL'Y, 307, 309 (2001) ("A professor who serves as a mentor would also be a person to whom a distressed student could approach for advice, guidance, or just simple reassurance."); Schuwerk, *supra* note 21, at 759 (discussing the "innumerable ways in which we could mentor our students").
  28. From both a spiritual and an academic perspective, I wish I had been quicker to grasp that "[o]nly a buddah *together with a buddha* can fathom the ultimate reality of all things." RISSHO KOSEI-KAI INTERNATIONAL OF NORTH AMERICA, KYOTEN SUTRA READINGS: EXTRACTS FROM THE THREEFOLD LOTUS SUTRA 20 (rev. English ed., 2008) (emphasis added).
  29. Learned Hand's classic approach to cost/benefit analysis in *United States v. Carroll Towing Co.*, 159 F.2d 169 (2d Cir. 1947).

scholarship has deprived me of one of the richest sources of *flow* that I've encountered in more than half a century prowling the planet.<sup>30</sup>

## VI. JOY IN THE RUINS

By some accounts, I'm a failure. A wasted draft pick, an aging mediocrity, just another professor in the pits. My labor law articles have failed by any conceivable measure to influence law, society, or intellectual thought. I'm a nobody's nobody in legal and academic circles, and, to recycle a favorite quote from Robert Penn Warren, I teach at a school that is "long on Jesus and short on funds."<sup>31</sup> Perhaps I should lie down in darkness, have my light in ashes,<sup>32</sup> and wail the loser's lament that I should have been, could have been, would have been better.

And yet I love what I do. I sense that it's my calling, and I'm humbled and grateful to be a teacher. Despite my very real failures and limitations, my career brings me tremendous satisfaction, especially when I focus on the crops brought to harvest rather than the opportunities blown.

### A. The Bull Durham<sup>33</sup> Professor of Jurisprudence: Life in the Minor Leagues

In a delightfully insightful (albeit obviously dated) essay, the late great Prosser explained that professors who fail to meet certain standards of scholarship are doomed to life in the minor leagues. "[L]ike the second baseman who cannot hit a curve, many a professor who has produced nothing of value is destined to languish all his days in a Class D league."<sup>34</sup> There's an undeniable pecking order among law schools; indeed, institutions bombard one another with self-congratulatory propaganda in an effort to crawl from tier to tier and enrich the prestige of their brand. This obsession is played out in comical form at AALS conferences, where professors automatically check one another's school tags like adolescent

30. See, e.g., MIHALY CSIKSZENTMIHALYI, *FLOW: THE PSYCHOLOGY OF OPTIMAL EXPERIENCE* (1990).

31. ROBERT PENN WARREN, *ALL THE KING'S MEN* 190 (1946).

32. See STYRON, *LIE DOWN IN DARKNESS*, *supra* note 5, at 386 (invoking lines from THOMAS BROWNE, *URN BURIAL* (1658)).

33. *BULL DURHAM* (Orion Pictures 1988).

34. William L. Prosser, *Lighthouse No Good*, 1 J. LEGAL EDUC. 257, 258 (1948-49). Value, furthermore, is defined via publications as opposed to teaching excellence. As Prosser explained:

A professor who is an artist in the classroom, a capable and inspiring teacher, but who cannot or will not write, is born to blush unseen and waste his sweetness on the desert air of a fourth-rate law school, while far too many men who write well but put all their students to sleep move upward in his stead. It is unfair, it is deplorable, it is outrageous, but it is none the less true.

*Id.* at 265.

boys nervously comparing their relative endowments in the gym's shower. You simply don't get the same recognition or respect in the minors as professors who can jack the jurisprudence out of the yard in the big leagues of Stanford, Harvard, and Yale.

So be it. There is a joyful challenge to teaching in the minors that plays to my strengths and personal preferences. The first reward is that there is such a tremendous range of aptitude, ambition, and educational background among my students. Many of them would excel at any school on earth; others desperately need every little bit of help I can offer. This brings me the excitement of trying to teach on multiple levels at the same time, pushing the complexities of the theoretical mysteries to keep the top students challenged, drumming home the doctrine to assure that even the slowest have solid turf beneath their toes, and never losing sight of the needs and potential of the great gobs of students who fall somewhere in the middle. This is especially fun when the students one worries about most, the hapless blokes who seem utterly senseless, prove with time, repetition, and mentoring to have the ability to succeed in school and do us proud in practice.

This underscores what I view (perhaps ostentatiously) as my chief talent—a pedagogical ventriloquism where I'm darn good at explicating proximate causation, felony murder, and other tricky, conflict-ridden concepts in ways that are interesting and intelligible to folks with remarkably diverse skill sets, learning methodologies, and ways of perceiving the world. My students have honored me with a few teaching awards over the years and are (too) generous in their evaluations, but the real reward is when veteran lawyers e-mail me to offer thanks for how I taught and advised them back when they were students slogging through personal quagmires or doctrinal despair. Sometimes they say they never would have made it without me, and sometimes I suspect they're correct. Life in the minors is as fulfilling as you make it, and I'm proud that I've taught and mentored countless students who've eclipsed me in the legal profession and are thrivingly vibrant major league lawyers by any standard.

#### B. Writing What I Seek to Discover

Writing what I knew got me tenure, an obvious blessing, but left me on a personal and professional treadmill where I sweated and suffered but left no tracks because I covered no ground, or at least no new terrain that would entice others or even sharpen my own intellectual acumen and enrich my perceptual prowess. Furthermore, I grew bored unto death of grinding out labor law articles. On top of that, I was devoting hundreds of hours to the study of Buddhist scriptures as I wrestled depression and sought to deepen my understanding of my new faith. These factors proved to be my

friends and signaled how I could renew my writing in a way that would bring me the joys of craftsmanship and spiritual sustenance, even if my manuscripts remained unread and unloved by others.

I started writing about my Buddhist faith, what it means to me, and how it could inform and enrich the study, practice, and teaching of law.<sup>35</sup> This worked for me, something clicked, and I began writing with the yearning of a pilgrim rather than the sterile, ultra-linear mindset of a big firm associate. This shift in tone, tuning, and voice enabled me to write from the heart in a new way because it was scholarship committed to *discovery*, the espial of a new faith and the development of a spiritual eye to receive and transmit a light I'd never known existed.

This has *not* lead to publications in elite journals, offers from other law schools, or much at all in the way of professional recognition. It has, however, helped me develop and clarify my religious precepts, integrate those precepts into my profession, and, I hope, bring insight and encouragement to other spiritual seekers.

## VII. CONCLUSION

I've had an interesting career, it ain't over yet, and I'm more thankful to my students than they could imagine. It's been good. My hope, however, is that my essay will help others interested in teaching lead lives that are better than good, lives where they push their potential into excellence and then transform their excellence into joy. At root, I offer the following guidance. Look outside yourself so you can look within yourself and then share what you find with the world. Actively seek the friendship and guidance of others, especially those from different tribes and traditions. As a student, throw yourself not just into your studies, but also into the Socratic festivities of your classes, the communal cogitations of study groups (or, better still, into spirited legal debates just for the hell of it), and make the most of your professors. If you're serious about law teaching, then seek out opportunities to work with, learn from, and teach your professors through your responsibilities as an R.A., through law review, and other routes. Once you graduate, clerk for a judge, preferably a well-respected one, and spend time in the legal trenches, doing "real" law, to develop your skills, identify your interests, and sprout that special empathy that comes only with getting your buttocks trounced in court. And once you enter teaching, remember that writing what you know is fine for starters, but writing what you seek to discover, both within yourself and

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35. See, e.g., John W. Teeter, Jr., *The Daishonin's Path: Applying Nichiren's Buddhist Principles to American Legal Education*, 30 MCGEORGE L. REV. 271 (1999); John W. Teeter, Jr., *Teaching Tips from the Lotus Sutra*, 77 TUL. L. REV. 443 (2002); John W. Teeter, Jr., *Eastern Visions, Western Voices: A Sermon on Love in the Valley of Law*, 53 CLEV. ST. L. REV. 429 (2005-2006).

externally, is the surest route toward self-fulfillment and professional growth.

